
6.3 COMMENT LETTERS AND RESPONSES

COMMENT LETTER # 1

TIM LESLIE

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Assembly California Legislature



TIM LESLIE
ASSEMBLYMEMBER, FOURTH DISTRICT

COMMITTEES:
VICE CHAIR, HIGHER EDUCATION
JUDICIARY
JOINT COMMITTEES:
JOINT LEGISLATIVE AUDIT COMMITTEE

June 15, 2006

Mr. John Webb, Chief
Office of Environmental Services—South
Caltrans North Region
2389 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

RE: Comments on Draft Supplemental EIR for the Shingle Springs Interchange Project

Dear Mr. Webb:

It must be unfortunate from Caltrans' perspective that California law and now a court order require further environmental analysis of this project. As has been the case with public input at each step of this project, I am confident that Caltrans will summarily dismiss any comments detailing the negative aspects of the Shingle Springs Interchange/Casino Project.

Evidence suggests that that this project has been a foregone conclusion at Caltrans for years. For example, in 2000 and 2001 while Governor Davis was vetoing legislation that would openly expedite this project, Caltrans was already working behind the scenes on the required environmental documentation. In 2003 when I learned that Caltrans might have been waiving the state's sovereign immunity, my request for a copy of the Highway Development and Encroachment Agreement was rebuffed until I threatened a Public Records Act request. During the initial environmental analysis Caltrans systematically undercounted traffic, over counted diverted trips, underestimated pollution, and ignored reasonable thresholds of significance in order to reach the conclusion that there would be no significant impacts from the project. When litigation commenced, despite this project's threat to regional transportation project funding Caltrans agreed to a reckless legal strategy that only benefited that Tribe and its financial backers. Moreover, Caltrans further agreed to be represented in court by attorneys funded by out of state gambling interests. These are but a few examples that illustrate Caltrans' insistence toward this project.

Interestingly, Caltrans has not always been so determined to construct this project. In 1994, Caltrans informed the Bureau of Indian Affairs that it would not allow isolated access to the freeway system. Again in 1996, Caltrans informed El Dorado County, the Shingle Springs Band of Miwok Indians, and the U.S. Bureau of Indian Affairs that it, "would not grant permission for access to Highway 50 in the vicinity of the Shingle Springs Rancheria..." Caltrans had determined that this project would cause inadequate freeway access spacing,

consequent safety concerns, and that private parcel access to freeways is simply “not allowed” under the Highway Design Manual. To date Caltrans has not provided me with any explanation of its complete policy reversal with respect to this project.

3 Cont.

Although I am certain that Caltrans is not interested in comments on the Draft Supplemental EIR, I will offer some for the public record. It comes as no surprise that the Supplemental analysis suggests that a smaller hotel and casino complex would not result in any significant impacts. If Caltrans did not perform its due diligence in analyzing the larger proposed project, how would it ever come to the conclusion that a smaller project is significant? Claiming that there are no significant impacts to a rural community from a 381,250 square foot casino and hotel complex with private freeway access on existing gaming corridor was and is simply absurd.

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Furthermore, the analysis of project level ozone precursor emissions is flawed. Although Caltrans finally utilized current air models, the traffic counts employed were significantly undercounted and do not reflect current conditions. Caltrans should have used actual traffic counts in the Supplemental analysis rather than the traffic projections of the original EIR. Failing to use this easily obtained current data results in artificially low project level emission estimates. This tactic certainly serves the interests of the Tribe and its financiers, but in no way serves the public interest.

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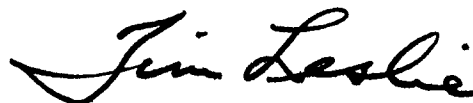
In addition, comparison of this project’s emission estimates with the Missouri Flat project is inappropriate. As Caltrans well knows but conveniently left out of the discussion in the Supplemental analysis, the Missouri Flat project is a traffic congestion relief project, not a traffic generating project like the casino and hotel. Caltrans’ misguided comparison of these two projects is a shamefully obvious attempt to poke El Dorado County in the proverbial eye.

6

I continue to be shocked by the unwavering resolve at our State Department of Transportation to approve this project. Given the persistent displays of obvious disregard for public interest that I have personally encountered on this project, I can only suspect that our system of checks and balances in this instance public decision-making has been corrupted by an outside influence.

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Sincerely,



TIM LESLIE
Assemblyman, Fourth District

TL: ma

cc: Governor Arnold Schwarzenegger
El Dorado County Board of Supervisors

Enclosure

ATTACHMENT A COMMENT LETTER #1

*DEPARTMENT OF TRANSPORTATION CORRESPONDENCE
REGARDING RIGHT OF WAY*

DEPARTMENT OF TRANSPORTATION

DISTRICT 3

P. O. BOX 911, MARYSVILLE, CA 95901

TDD Telephone 916-741-4509

FAX Telephone 916-741-4490

Telephone 916-741-4412



May 27, 1994

03-ED-50

Shingle Springs Rancheria

United States Department of the Interior
Bureau of Indian Affairs
Attention Mr. Ronald M. Jaeger
Sacramento Area Office
2800 Cottage Way
Sacramento, CA 95825

Dear Mr. Jaeger:

On May 17, 1994, you inquired as to the possibility of gaining access to Highway 50. Highway 50, in the area of your inquiry, is a full freeway with interchange spacing at two mile intervals. Caltrans will not allow isolated access connections to the freeway system. Therefore, we are unable to provide a new access at the location you indicated on the map attached to your letter.

Sincerely,

Original signed by
Joseph L. Atteberry

JOSEPH L. ATTEBERRY
Deputy District Director
Right of Way

cc: John L. Allison - District Director
Michelle Millette - Secretary
Mike Evans - DDD Traffic Operations

JLA:sg

ATTACHMENT B COMMENT LETTER #1

DEPARTMENT OF TRANSPORTATION CORRESPONDENCE

REGARDING ACCESS TO HIGHWAY 50

DEPARTMENT OF TRANSPORTATION

DISTRICT 3, SACRAMENTO AREA OFFICE - MS 41

P.O. BOX 942874

SACRAMENTO, CA 94274-0001

TDD Telephone (916) 741-4509

FAX (916) 323-7999

Telephone (916) 327-3859

PETE WILSON, Governor

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JUN 24 11 32 AM '96

COUNTY COUNSEL
EL DORADO COUNTY

June 24, 1996

Mr. Conrad B. Montgomery
Planning Director
El Dorado County
2850 Fairlane Court
Placerville, CA 95667

Dear Mr. Montgomery:

Caltrans is concerned with the inaccurate and misleading information in the newspapers regarding the potential access from Highway 50 for the Shingle Springs Rancheria and the proposed Native American gaming facility. I would like to clarify the situation to assist your office in its proceedings regarding the proposal.

Caltrans will not grant permission for access to Highway 50 in the vicinity of the Shingle Springs Rancheria for the following reasons.

- Inadequate freeway access spacing. Caltrans and the Federal Highway Administration normally require a minimum of one mile spacing between freeway access points in urban areas and a minimum of two miles in rural areas. Adequate freeway access spacing is necessary to maintain satisfactory freeway operations and to avoid potential safety problems associated with the frequency of traffic entering and exiting the freeway. The location of the Shingle Springs Rancheria is considered rural and the spacing between the two adjoining interchanges, Shingle Springs Road and Greenstone, is less than 1.9 miles. The access point generally being discussed would only be about .9 mile from the Highway 50 and Greenstone Interchange.
- Potential safety problems. The Highway Design Manual and Caltrans standard practices call for the avoidance of isolated off ramps or partial interchanges because of the potential for wrong-way vehicle movements and driver confusion.
- Private property access openings are not allowed. The Highway Design Manual requirements and Caltrans' practices mandate that access openings on highways with access control be held to a minimum. Private property access to freeways where access would only serve one private parcel and not connect to the public road system is not allowed. The proposed access from Highway 50 to the Shingle Springs Rancheria would be considered an access to private property.

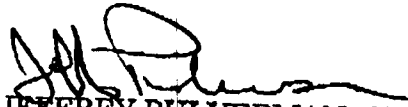
Mr. Conrad B. Montgomery
June 24, 1996
Page 2

Access to the Shingle Springs Rancheria should be by way of the local road system. If the local road system is currently not capable of accommodating planned land uses on the Rancheria, a frontage road from the Rancheria to either Shingle Springs Road or Greenstone appears to be most appropriate.

The aforementioned information was conveyed to the United States Department of the Interior, Bureau of Indian Affairs, in a letter dated May 27, 1994. I have enclosed a copy for your information.

I hope this clarifies the situation. However, if you have any questions, please call me at 327-3859.

Sincerely:


JEFFREY PULVERMAN, Chief
Office of Transportation
Planning - Metropolitan

cc: David Murray, Tribal Chairman, Shingle Springs Rancheria
Supervisor Ray Nutting, Chairperson, El Dorado County Board of Supervisors
Matt Boyer, El Dorado County Transportation Commission

COMMENT LETTER #1 RESPONSE

Comment Letter #1 – The Honorable Tim Leslie, California State Assembly

1-1. Caltrans thanks Assemblyman Leslie for his comments, but respectfully disagrees with the comment that Caltrans has, or will, summarily dismiss public comments on this Interchange Project. Caltrans has responded in detail to public comments on the EIR and responds in this Final Supplemental EIR to comments on the Draft Supplemental EIR. Caltrans has also discussed with Assemblyman Leslie his concerns regarding the Interchange Project, expressed in a letter dated December 19, 2005 (preceding the publication of the Draft Supplemental EIR), and thereafter responded in writing to those concerns. Copies of the December 19, 2005 and January 5, 2006 letters are attached to these Responses as Appendix C.¹ Caltrans acknowledges that this Supplemental EIR has been prepared in response to an order from the Court of Appeal, but also notes that with just two exceptions, the Court upheld the environmental analysis in the 2002 Final EIR, including Caltrans' basic decision to evaluate the impacts of the Tribe's proposed casino as indirect impacts of the Interchange Project. As stated in its January 5, 2006 letter, Caltrans' role in the Interchange Project is solely as the independent steward of the State Highway System and the lead agency under CEQA. *See* Appendix C. Caltrans is not the project proponent.

1-2. As discussed in Response 1-1, above, and in Appendix C, contrary to the commenter's statements, Caltrans' role in this project is as the independent steward of the State Highway system and the lead agency under CEQA required to evaluate the Interchange Project. This commenter made similar comments on the 2002 Draft EIR, and Caltrans responded to those in the 2002 Final EIR. 2002 Final EIR at Response 28-1.

As Caltrans stated in its January 5, 2006 letter to the commenter, when the Tribe and Lakes Entertainment attempted to remove the litigation concerning the Interchange Project to federal court, Caltrans refused to waive its Eleventh Amendment immunity to suit in federal court. Further, Caltrans has always had independent final approval of all pleadings filed on its behalf, and has, since December 2004, maintained legal representation in the litigation independent from the Tribe and Lakes. Finally, as Caltrans also explained in its January 5, 2006 letter, Caltrans is not required to use newer traffic models in the Supplemental EIR as the trial court and the Court of Appeal both found the traffic assumptions, forecasts, and models that were used in the 2002 Final EIR to be legally adequate. Trial Court Amended Ruling on Submitted Matter (Ruling) at 21-22; Court of Appeal Decision (Decision) at 41-43.² As well, the distinct air quality issues the courts raised did not call into question the 2002 Final EIR's traffic studies in any manner. Ruling at 25-26; Decision at 57-58.

1-3. This comment regarding the adequacy of spacing between interchanges was made and responded to during the 2002 EIR process. 2002 Final EIR at Responses 27-3, 40-4. The commenter may refer back to the identified responses in the 2002 Final EIR for additional information in response on this point. Furthermore, these issues are outside the scope of this Supplemental EIR.

¹ Because this Responses to Comments Chapter is published together with the Draft Supplemental EIR to create a single, comprehensive Final Supplemental EIR, Appendices in this Responses document are numbered consecutively from the Draft Supplemental EIR. The Draft Supplemental EIR included Appendices A and B, therefore the first appendix to this Responses document is Appendix C. The December 19, 2005 letter includes a memorandum from El Dorado County's outside counsel in this matter. That memorandum as attached to the letter was incomplete in Caltrans' files, and therefore is also incomplete as included in Appendix C.

² The Superior Court and Court of Appeal decisions are included with these Responses as Appendix D.

1-4. The commenter takes issue with Caltrans' analysis of the Interchange Project and suggests the Supplemental EIR's analysis of smaller project alternatives is consequently lacking. With two specific exceptions, the Court of Appeal upheld the 2002 Final EIR as compliant with CEQA, and more specifically, upheld all of Caltrans' analysis and conclusions regarding the Interchange Project. Decision at 57-58. Thus, all of the 2002 Final EIR's conclusions were either upheld by the Court, or were not challenged; the Court only required additional analysis in two specific areas. Accordingly, it is appropriate for Caltrans to rely on the 2002 Final EIR in analyzing the potential impacts of the smaller casino and hotel and smaller casino/no hotel alternatives in the Supplemental EIR in response to the Court of Appeal decision.

1-5. Substantial evidence and the trial court and Court of Appeal decisions on the 2002 Final EIR support Caltrans' reliance on the traffic information in the 2002 Final EIR. Please also see Response 1-4, above.

First, the trial court and the Court of Appeal upheld the traffic analysis in the 2002 Final EIR. Ruling at 21-22; Decision at 41-43. Accordingly, no further traffic analysis is required, and the traffic analysis in the 2002 Final EIR is conclusively presumed valid and adequate. Please also see Supplemental EIR at Section 5.4, Appendix B.

Second, contrary to the commenter's assertions, and as Caltrans explained to the commenter in its January 5, 2006 letter, the use of newer traffic models in the Supplemental EIR is not required because the trial court and the Court of Appeal upheld the traffic assumptions, forecasts, and models that were used in the 2002 Final EIR. Ruling at 21-22 ("the EIR's analysis of traffic impacts was clearly sufficient and supported by substantial evidence"); Decision at 41-43 ("Caltrans has adequately defended its method of determining the trip generation rates"). Accordingly, neither ruling directed Caltrans to revisit any of its traffic analysis, whether for the purposes of the required additional analysis in the Supplemental EIR, or otherwise. Ruling at 26; Decision at 57-58. Thus, doing so, as the commenter suggests, is beyond the required scope of the Supplemental EIR.

Third, from a significance perspective, the Supplemental EIR found that the Interchange Project would contribute approximately one-third of one percent to the regional motor vehicle emissions budgets for ozone precursors. Supplemental EIR at p.5.5-7. It is highly unlikely that using higher counts of existing traffic, as the commenter suggests, would change this conclusion, because the project's emissions are determined almost exclusively by casino traffic, which higher counts of existing traffic would not affect.

1-6. Caltrans disagrees with the commenter's statement that "the Missouri Flat project is a traffic congestion relief project." The Missouri Flat project is similar to the Shingle Springs Interchange Project in that it serves a specific development project (although the Interchange Project also provides general access to the existing Shingle Springs Rancheria and existing uses on the Rancheria). Supplemental EIR at p.5.5-11. As the Supplemental EIR explains, when the Missouri Flat project is considered in its entirety (the interchange and the development it serves), just as the Shingle Springs Project is considered in its entirety in the 2002 Final EIR and Supplemental EIR (reservation activities, casino, hotel and interchange), the Missouri Flat project has substantially greater emissions than the Shingle Springs Project. Supplemental EIR at Tab. 5.5-10.

1-7. Caltrans disagrees with the comment that it has disregarded, or would disregard, the public interest. As noted in Response 1-1, above, Caltrans has responded in detail to public comments on the 2002 Final EIR, and has also discussed with the commenter his concerns regarding the project and responded in writing to those concerns. See Appendix C to these Responses. Caltrans' role in the Interchange Project is as the independent steward of the state highway system and the lead agency under CEQA.

Attachments. The attachments to this comment letter pertain to Comment 1-3 and are responded to in Response 1-3, above. As noted in Response 1-3, above, the attachments raise the same basic issues regarding Caltrans' policy towards access to Highway 50 that were raised concerning the 2002 Final EIR. The 2002 Final EIR, at Response 28-1, addressed those issues. Further, those issues are outside the scope of this Supplemental EIR, and the commenter should refer back to the 2002 Final EIR for further information in response to this point.